

BEFORE NANCY KEENAN, SUPERINTENDENT OF PUBLIC INSTRUCTION
STATE OF MONTANA

* * * * *

TRUSTEES, MADISON COUNTY)
SCHOOL DISTRICT NO. 7,)

Appellants,)

vs.)

HAZEL MARIE PHILLIPS,)

Respondent.)

OSPI 180-89

AMENDED OPINION AND ORDER

* * * * *

STATEMENT OF THE CASE

Respondent, Hazel Marie Phillips (Phillips), was employed as a tenured teacher by the Appellant School District. On February 28, 1989, Kathleen Eaton, Superintendent of the Twin Bridges School District, recommended that Phillips be terminated due to the financial condition of the district. The recommendation letter followed action by the Board on February 3, 1989, eliminating the English/Art position which Phillips held.

On March 22, 1989, the School Board held a hearing on the Superintendent's recommendation to terminate Phillips. After the hearing, the Board voted to accept the Superintendent's recommendation. Phillips subsequently appealed the decision to the Madison County Superintendent of Schools.

The hearing was held before Acting County Superintendent Dorothy Donovan on August 21, 1989. On October 24, 1989, the County Superintendent issued her Findings of Fact, Conclusions of

AMENDED OPINION AND ORDER 1

1 Law and Order finding that Phillips was "terminated unjustly
2 because of a personality conflict and not for the alleged
3 financial reasons stated." The School District appealed the
4 order to the State Superintendent.

5 On November 30, 1990, this Superintendent issued her Opinion
6 and Order affirming the County Superintendent. A petition for
7 judicial review was filed in the Fifth Judicial District on
8 December 28, 1990. Subsequently, it was determined that the
9 record reviewed by this Superintendent was incomplete.
10 Therefore, by stipulation and agreement, the parties agreed to
11 the District Court's remand to this Superintendent for
12 reconsideration of the prior decision and review of all the
13 evidence presented by the parties to the County Superintendent.

14 **OPINION AND ORDER**

15 The decision of the County Superintendent is reversed
16 because the Findings of Fact and Conclusions of Law are clearly
17 erroneous in view of the reliable, probative and substantial
18 evidence on the whole record.

19 The School District has contended throughout these
20 proceedings that the financial condition of the district required
21 budget cuts. Among the budget cuts recommended by the District
22 Superintendent and discussed and reviewed by the Trustees were
23 elimination of certain positions, including that of Phillips.

24 Phillips has responded that her termination was the result
25 of a personality conflict with the District Superintendent.

AMENDED OPINION AND ORDER 2

1 As stated in the prior opinion of this Superintendent, the
2 record of hearing before the County Superintendent contains
3 testimony of a conflict. The County Superintendent as the trier
4 of fact determined the credibility of witnesses and the weight of
5 evidence. The County Superintendent found that there was a
6 "continuing conflict of personalities" between Eaton and
7 Phillips, and she further found that Eaton recommended the
8 termination of Phillips' position because of this conflict.
9 (Findings of Fact Nos. 7 and 8).

10 However, pivotal to this matter is the financial condition
11 of the district. Extensive financial information is in the
12 record. What ~~must~~ be noted at this time is that it has become
13 clear from the now complete record on appeal that the County
14 Superintendent had available and considered financial information
15 that was not available to the School District at the time they
16 made their decision to eliminate Phillips' position and
17 subsequently terminate her. (Finding of Fact No. 4).

18 The Trustees began the budget process as early as December
19 1988. This is ascertained by the Board minutes made part of the
20 record. This process was ongoing through the rejection of an
21 emergency levy in January 1989, the passage of an emergency levy
22 in February 1989, and numerous meetings and discussions about the
23 financial condition of the district and the budget proposals for
24 1989-90. (Respondents' Exhibits 1G-1T).

25 The County Superintendent found that "The District clearly

1 needed to make financial adjustments." (Finding of Fact No. 10).
2 She then seems to conclude that the financial adjustments
3 necessary were not so extensive or appropriate as to eliminate
4 Phillips' position. This is not entirely clear.

5 The County Superintendent found that the reserve account for
6 1989-90 was double the 1987-88 and triple the 1988-89 amounts.
7 (Finding of Fact No. 4). However, this could not have been
8 determined until the fall of 1989, long after the March 22
9 hearing and the April 1 date for notice of termination to a
10 tenured teacher.

11 At the time the Trustees made their budget decisions they
12 had certain information. The minutes of the Board meetings
13 reflect what information was available to the Trustees during
14 their decision-making process. Reserves were used up and the
15 value of the mill had dropped drastically in the prior year and
16 the expectation was that it would be the same. (Respondents'
17 Exhibit 1T). They knew that the \$47,277 emergency levy for the
18 high school had passed. They did not know that the taxable
19 valuation for 1989 would increase over 1988. The taxable
20 valuation for tax year 1989 would not have been certified until
21 August 1989, just before the mills were set for the 1989-90
22 school year. The Board minutes of February 15 reflect that Dave
23 Smith was concerned that "The school lost \$70,000 in revenue from
24 the Pfizer mill only." (Respondent's Exhibit 1P). The Trustees
25 could not have found out that the Pfizer talc mine had increased

1 production in calendar year 1988 (which determines that tax base
2 for the 1989-90 school year), until after March 31. The increase
3 in production represents the greater portion of the increase in
4 taxable valuation for the district.

5 Early 1989 was an uncertain time for school districts. The
6 Supreme Court had just handed down its decision on school funding
7 and the Legislature was struggling with solutions. Given the
8 information available to the Trustees in February and March 1989,
9 using projected figures based on 1988-89 as best information, the
10 School District thought it was looking at a financial emergency.
11 The Trustees made their decisions based on that information.

12 On the other hand, the decision of the County Superintendent
13 reveals that she had financial information available to her that
14 did not exist when the Trustees made their decisions. Since her
15 review is an appeal of the March 22, 1989 decision of the
16 Trustees, it is fundamental that she must review evidence that
17 was available to the Trustees on the date of their decision.
18 Otherwise, there would exist a whole new set of evidence and a
19 different decision could be reached.

20 The School District is correct in its contention that even
21 if a personality conflict did exist between the Superintendent
22 and Phillips, that it cannot prevent a district from acting to
23 terminate a teacher because of the financial condition of the
24 district. Notwithstanding my November 1990 holding, the record
25 supports that the information the Trustees had at the time they

1 made their decision supported their conclusion that the state of
2 school finances on March 22, 1989 was such to justify the
3 budgetary decisions they made. It is unfortunate that when
4 knowledge of the 1989 increase in taxable valuation became
5 available to them, the District did not seek to reinstate the
6 position and Phillips.

7 DATED this 27 day of June, 1991.

8
9 Nancy Keenan
10 NANCY KEENAN
11
12 ~
13
14
15
16
17
18
19
20
21
22
23
24
25

AMENDED OPINION AND ORDER 6

CERTIFICATE OF SERVICE

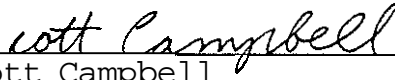
THIS IS TO CERTIFY that on this 27th day of June, 1991, a true and exact copy of the foregoing AMENDED OPINION AND ORDER was mailed, postage prepaid, to the following:

Charles E. Erdmann
Catherine M. Swift
ERDMANN LAW OFFICE
P.O. Box 5418
Helena, MT 59604

J.C. Weingartner
Attorney at Law
222 Broadway
Helena, MT 59601

Dorothy Donovan
Beaverhead County Superintendent
2 South Pacific
Dillon, MT 59725

Jackie Pace
Madison County Superintendent
Box 247
Virginia City, MT 59755



Scott Campbell
Paralegal Assistant
Office of Public Instruction

AMENDED OPINION AND ORDER 7